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6 Attorneys for Plaintiff
7 United States of America

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA)	Case No. 08CR1811-WQH
)	
11 Plaintiff,)	UNITED STATES' TRIAL MEMORANDUM
)	
12 v.)	
)	
13 ANGEL RIOS,)	Date: September 3, 2008
)	Time: 9:00 a.m.
)	Hon.: William Q. Hayes
14 Defendant.)	
)	

15 COMES NOW Plaintiff, UNITED STATES OF AMERICA, by and through its
16 counsel, KAREN P. HEWITT, United States Attorney, and PETER J. MAZZA,
17 Assistant United States Attorney, and hereby files its Trial
18 Memorandum.

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I.

STATEMENT OF THE CASE

A. CHARGES & INDICTMENT

On June 4, 2008, a federal grand jury indicted Defendant Angel Rios on two counts: (1) bringing in an illegal alien for financial gain in violation of 8 U.S.C. § 1324(a)(2)(B)(ii); and (2) bringing in illegal aliens without presentation in violation of 8 U.S.C. § 1324(a)(2)(B)(iii). Defendant entered a not guilty plea at the June 5, 2008.

B. TRIAL STATUS

Trial is scheduled for September 3, 2008 at 9:00 a.m., before the Honorable William Q. Hayes. The United States anticipates that its case-in-chief will take one day.

C. STATUS OF DEFENDANT

Defendant remains on bond after his June 16, 2008 pretrial release.

D. STATUS OF COUNSEL

Defendant is represented by Timothy Garrison and Bridget Kennedy, Federal Defenders of San Diego, Inc. (appointed counsel).

E. INTERPRETER

The United States will need a Spanish language interpreter for at least one of its witnesses. The Government is unaware of whether Defendant will require an interpreter.

F. JURY WAIVER

Defendant has not waived trial by jury.

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1 in Mexico. Defendant stated he had visited his aunt and was going to
2 San Diego, California. Defendant then made two negative customs
3 declarations in response to inquiries from CBPO Reese. Officer Reese
4 referred Defendant and his vehicle to secondary inspection for further
5 examination.

6 **B. Secondary Inspection**

7 At secondary inspection, CBP Canine Enforcement Officer (CEO)
8 Michael Sagawa inspected the vehicle with his human/narcotics
9 detection dog. The dog immediately alerted to the vehicle. Upon
10 entering the passenger compartment, the dog indicated the presence of
11 a person/contraband in the dashboard area of the car. CEO Sagawa
12 removed the dog from the vehicle and inspected the dash. He observed
13 human skin and hair and dark clothing through a gap between the
14 dashboard and the glove box. A lone male individual, later identified
15 as Rafael Cortes-Cortes, was removed from a specially modified
16 compartment inside the dashboard. Officers could see Cortes-Cortes's
17 feet through an opening under the dashboard of the vehicle. Officers
18 observed that Cortes-Cortes was positioned horizontally behind the
19 dashboard with his feet toward the driver's side. Officers removed
20 Cortes-Cortes after pulling the dashboard panel upward.

21 Officers determined Cortes-Cortes was a citizen and native of
22 Mexico without any legal right to enter or remain in the United
23 States. Officers took Defendant into custody.

24 **C. Defendant's Statement**

25 At approximately 3:18 a.m., Defendant was advised of his Miranda
26 rights in the English language. Defendant invoked his right to
27 counsel.

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1 **D. Material Witness's Statement**

2 The material witness, Rafael Cortes-Cortes, stated that he is a
3 Mexican citizen by birth and that he does not possess any documents
4 that would permit his legal entry into the United States. Cortes-
5 Cortes admitted to having tried to enter the United States previously.
6 He further admitted that he was removed from the United States on May
7 19, 2008.

8 Cortes-Cortes stated he personally made arrangements with an
9 unknown smuggler in Mexico to be smuggled into the United States for
10 \$2,500. Cortes-Cortes stated the smuggler drove him to a house where
11 he was eventually loaded into Defendant's vehicle. According to
12 Cortes-Cortes, the vehicle made a brief stop on the way to the port
13 of entry. Cortes-Cortes believed that someone got out of the vehicle
14 during the brief stop. He informed agents that he heard two men
15 speaking in Spanish during the stop. Cortes-Cortes stated that one
16 man told the other to "get out." Cortes-Cortes estimated that he was
17 in the compartment for approximately ten minutes before being removed
18 by the officers at the port of entry.

19 **E. Defendant's Criminal Record**

20 Defendant does not have any prior convictions.

21 **III**

22 **LEGAL ISSUES**

23 **A. Elements of the Charged Offenses**

24 **1. Elements of Title 8, United States Code, Section**
25 **1324(a)(2)(B)(ii)(Bringing in for Financial Gain)**

26 Defendant is charged in Count 1 with bringing in illegal aliens
27 for financial gain. The essential elements of a violation of 8 U.S.C.
28 Section 1324(a)(2)(B)(ii) are:

- a. Defendant brought, or attempted to bring, a person to the United States who was not a citizen of the United States;
- b. That person had not received prior official authorization to come to, enter, or reside in the United States;
- c. Defendant knew, or was in reckless disregard of the fact, that the person had not received prior official authorization to come to, enter, or reside in the United States; and
- d. Defendant acted for the purpose of commercial advantage or private financial gain and with the intent to violate the immigration laws of the United States.

2. Elements of Title 8, United States Code, Section 1324(a)(2)(B)(iii)(Bringing in Without Presentation)

Defendant is charged in Count 2 with bringing in illegal aliens without presentation. The essential elements of a violation of 8 U.S.C. Section 1324(a)(2)(b)(iii) are:

- a. Defendant brought or attempted to bring a person to the United States;
- b. The person was not a citizen of the United States and had not received prior authorization to come to, enter, or reside in the United States;
- c. Defendant knew or acted in reckless disregard of the fact that the person had not received prior official authorization to come to, enter, or reside in the United States when the Defendant brought in, or attempted to bring, the person into the United States;
- d. Defendant failed to bring and present the person immediately upon arrival to an appropriate immigration officer at a designated port of entry; and
- e. Defendant acted with the intention of violating the immigration laws of the United States.

3. Elements of Title 18, United States Code, Section 2, Aiding and Abetting

The essential elements of Title 18, United States Code, Section 2, aiding and abetting are:

- a. The bringing in of aliens was committed by someone;

1 b. Defendant knowingly and intentionally aided,
2 counseled, commanded, induced or procured that person
3 to commit the bringing in or transportation of aliens;
4 and

5 c. Defendant acted before the crime was completed.

6 **B. Expert Testimony**

7 Out of an abundance of caution, the United States has given
8 notice that it may call CBPO Elizabeth Rangel-Machuca to testify
9 regarding Defendant's crossings as well as the crossings of the load
10 vehicle, which is registered in Defendant's name.

11 **C. Legal Issues**

12 **1. Section 1324(a)(2)(B)(ii) of Title 8 Requires Proof That**
13 **The Illegal Alien Was Brought In For Financial Gain, But**
14 **Does Not Require Proof That Defendant Brought In The**
15 **Illegal Alien For Defendant's Own Personal Financial Gain**

16 The plain language of 8 U.S.C. § 1324(a)(2)(B)(ii) requires only
17 that the offense be done for the purpose of commercial advantage or
18 private financial gain -- not that the defendant himself act for that
19 reason. See 8 U.S.C. § 1324(a)(2)(B)(ii) (describing "an offense done
20 for the purpose of commercial advantage or private financial gain").
21 The "offense done" is bringing aliens to the United States or
22 attempting to bring aliens to the United States as defined in Section
23 1324(a)(2). Accordingly, the United States need not prove that
24 Defendant acted "for the purpose of commercial advantage or private
25 financial gain."

26 In United States v. Angwin, 271 F.3d 786, 805 (9th Cir. 2001),
27 overruled on other grounds, United States v. Lopez, 484 F.3d 1186 (9th
28 Cir. 2007) (en banc), the Ninth Circuit squarely addressed this issue.
In Angwin, the Ninth Circuit found that 8 U.S.C. § 1324(a)(2)(B)(ii),
"does not require evidence of an actual payment or even an agreement
to pay" but "merely requires that the offense was done for the purpose

1 of financial gain." Id. As such, the Angwin court found that the
2 United States did not have to provide evidence of the defendant's
3 personal financial gain. Following the Angwin court, the Ninth
4 Circuit has also stated "[b]ecause [the defendant] was charged as an
5 aider and abettor under 18 U.S.C. § 2, the government could make out
6 this element merely by proving that a principal -- not necessarily
7 [the defendant] himself -- committed the crime with a pecuniary
8 motive; it need not show 'actual payment or even an agreement to
9 pay.'" United States v. Tsai, 282 F.3d 690, 697 (9th Cir. 2001)
10 (quoting Angwin); see also United States v. Schemenauer, 394 F.3d 746,
11 751 (9th Cir. 2005) (concluding evidence sufficient to sustain a
12 conviction for financial gain where evidence only established that
13 defendant had an expectation to share in payments made to smuggle
14 alien). As both the plain language of the statute and the cases above
15 demonstrate, Section 1324(a)(2)(B)(ii) requires that the United States
16 prove only that somebody brought an alien to the United States for the
17 purpose of commercial advantage or financial gain -- not that the
18 defendant himself acted for his own personal profit.

19 IV

20 WITNESSES

21 The Government reserves the right to change the order of,
22 substitute, or add or omit one or more witnesses. Presently, the
23 Government may call the following witnesses during its case-in-chief:

- 24 1. Elizabeth Rangel-Machuca, Customs and Border Protection
- 25 2. Manuel Acevedo, Customs and Border Protection
- 26 3. Sheryl Reese, Customs and Border Protection
- 27 4. Michael R. Sugawa, Customs and Border Protection
- 28 5. Liliana Deanda, Customs and Border Protection

6. Edward Chavoya, Customs and Border Protection

7. Mr. Rafael Cortes-Cortes

8. Mr. Samuel Cortes

V

EXHIBIT LIST

The Government will provide an exhibit list on the morning of trial. The United States intends to offer into evidence some or all of the following exhibits:

1. Photographs of Vehicle

2. Photographs of compartment

3. Photographs of San Ysidro Port of Entry

4. Documents seized from the vehicle

5. Treasury Enforcement Communication (TECS) crossing history documents

The Government will make its exhibits available to the Defendant for examination in advance of trial. The Government further requests a reasonable opportunity to examine Defendant's exhibits before trial.

VI

PROPOSED VOIR DIRE

1. The Court will instruct you about the law. Will you follow the law as given by the Court and disregard any idea or notion you have about what the law is or should be?

2. The United States will be calling witnesses who are employed by United States Customs and Border Protection, and possibly other branches of the Department of Homeland Security. Does anyone have family members or close friends who work, or have worked, for any of those agencies (or their predecessor agencies: the U.S. Customs Service and

1 Immigration and Naturalization Service)? Would that
2 prevent you from being fair and impartial?

3 3. Has anyone had an unpleasant or negative experience with
4 any law enforcement personnel? If so, please describe.
5 Would that cause you to be biased against law enforcement?

6 4. Has anyone ever had any disputes with any agency of the
7 United States Government? If so, please describe.

8 5. Have you or any relatives or close friends ever been
9 accused of, or charged with, a crime involving alien
10 smuggling?

11 6. Has anyone had any training in the law? If so, please
12 explain.

13 7. Will you be able to put aside any feelings of sympathy or
14 pity for the defendant, if you have any, when deciding this
15 case?

16 8. Does everybody understand that the defendant is entitled to
17 a fair trial? Does everybody understand that the United
18 States is also entitled to a fair trial?

19 9. Does anyone have any moral or religious reservations that
20 might prevent you from standing in judgment of another
21 human being?

22 10. The defendant in this case is charged with smuggling human
23 beings into the United States for financial gain. Does
24 anybody have strong feelings or opinions about United
25 States Immigration laws that would prevent you from viewing
26 the evidence impartially?

27 11. Regardless of your position on the legalization or
28 criminalization of immigration, will you be able to follow

1 the law of the United States as it presently stands and as
2 the judge instructs you regarding the criminal smuggling of
3 human beings?

4 12. Has anyone been a member of an organization involved the
5 "immigration debate"? Explain.

6 13. Does anyone believe the current immigration laws are too
7 strict? Please explain.

8 14. Does anyone believe the current immigration laws are too
9 lenient?

10 15. Does anyone feel strongly about the United States'
11 immigration policies? Explain.

12 16. The United States will call many law enforcement personnel
13 as witnesses. Would that prevent you from being fair and
14 impartial?

15 17. Do any of you feel that it should not be a crime to enter
16 - or assist someone else to enter - the United States
17 illegally?

18 18. Have you ever had a particularly pleasant or particularly
19 unpleasant experience while crossing the border into the
20 United States at the San Ysidro Port of Entry or at another
21 port of entry into the United States? Please describe that
22 experience. Would that experience have bearing on your
23 ability to be fair and impartial? Please explain.

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VII

JURY INSTRUCTIONS

The United States will submit proposed jury instructions under separate cover.

Dated: August 24, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ Peter J. Mazza
PETER J. MAZZA
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 08CR1811-WQH
)
Plaintiff,)
)
v.)
)
ANGEL RIOS,) CERTIFICATE OF SERVICE
)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED THAT:

I, PETER J. MAZZA, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the Government's Trial Memorandum on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. TIMOTHY GARRISON, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 24, 2008.

s/ Peter J. Mazza